CHIN JIT PYNG & ORS v. KETUA PENGARAH KASTAM & ANOR

HIGH COURT MALAYA, KUALA LUMPUR
HANIPAH FARIKULLAH J
[JUDICIAL REVIEW NO: 25-78-05-2015]
11 AUGUST 2016

CUSTOMS AND EXCISE: *Custom duties – Vehicle – Vehicle brought to Malaysia through Langkawi – Tax exemption – Overstay in principal custom area – Offence under s. 138 of Customs Act 1967 – Seizure of vehicles – Imposition of customs tax together with compound – Whether re-imposition of customs tax upon violation of tax exemption mandatory by virtue of s. 15 of Customs Act 1967*

ADMINISTRATIVE LAW*: Judicial review – Jurisdiction – Offence under s. 138 of Customs Act 1967 – Seizure of vehicles – Imposition of customs tax together with compound – Decision of Customs Department to re-impose customs tax upon violation of tax exemption – Whether matters pertaining to compound by Customs Department beyond jurisdiction of civil courts*

The officers of the respondents seized and detained 34 vehicles ('the vehicles') which was purchased by the registered owners and brought into Malaysia through Langkawi. The registered owners ('the applicants') were granted duty/tax exemption by the Minister in accordance with s. 14(1) of the Customs Act 1967 ('Act') read together with Customs Duties (Exemption) Order 1988/Customs Duties (Exemption) Order 2013 and Sales Tax (Exemption) Order 1980. Pursuant to Part 1 item 13 (iv) of the Schedule to the Customs Duties (Exemption) Order 2013, the vehicles could only remain in the principal custom area ('PCA') which meant Malaysia exclusive of Labuan, Langkawi and Tioman pursuant to s. 163A of the Act for a period not exceeding 30 days per trip; subject to a maximum period of 90 days in any one year. The respondents contended that the seizures were made pursuant to s. 114(1) of the Act for contravening item 21A of Customs Duties (Exemption) Order 1988 or item 13 of Customs Duties (Exemption) Order 2013 namely for overstay in the PCA. The other applicants were issued with a bill of demand for payment of customs duty/tax together with an offer of RM5,000 compound. *Via* a letter dated 3 March 2015, the applicants proposed to pay the customs duty/tax at a lesser amount with compound. In response, the first respondent issued a letter dated 24 March 2015, offering a compound of RM1,000 for the offence committed under s. 138 of the Act together with payment of customs duty/tax. The applicants then forwarded 35 banker's cheques worth RM1,000 each for payment of the compound. Failing to simultaneously enclose payment of customs duty/tax, the first respondent returned the banker's cheques *via* a letter dated 20 April 2015 and withdrew the offer dated 24 March 2015. Dissatisfied with the withdrawal of the compound offer, the applicants filed the present judicial review application imploring to quash the first respondent's letters. It was the

applicants' contention that since the respondents had imposed a compound on the applicants pursuant to s. 138 of the Act, the respondents had no power to impose duty pursuant to that section.

Held (dismissing application with costs):

(1) When the vehicles overstayed in the PCA, the vehicles ceased to comply with the condition in the Exemption Order 1988/2013. The applicants, therefore, were suspected to have committed an offence under s. 138 of the Act. Also, due to the breach of the Exemption Order, the vehicles became 'uncustomed goods'. The re-imposition of customs duty upon violation of the duty exemption was mandatory by virtue of the law. Thus, it involved no administrative decision-making process by the first respondent or any officer of the respondents. (paras 24, 25 & 27)

(2) Under s. 131 of the Act, the power to compound and the amount of compound are discretionary powers which are only exercisable by the appropriate officer of customs. Further, matters pertaining to compound are part and parcel of the enforcement of criminal law under the Act, which is beyond the jurisdiction of civil courts. (paras 31 & 32)

(3) Upon the breach of the exemption order, the vehicles shall become liable to the customs duty and any person found in possession of such goods shall be jointly and severally liable to pay such customs duty. The re-imposition customs duty was made mandatory by s. 15 of the Act. The vehicles were legally seized under s. 114(1) of the Act for committing an offence under s. 138 of the Act and validly detained under s. 131 of the Act until customs duty payable is paid. (paras 39 & 40)

Case(s) referred to:

Ahmad Azam Mohd Salleh & Ors v. Jabatan Pembangunan Koperasi Malaysia & Ors [2004] 4 MLJ 86 ***(refd)***

Calio Car Rentals & Tours Sdn Bhd v. Pengarah Kastam Dan Eksais Diraja Malaysia [1997] 1 LNS 105 HC ***(refd)***

City Growth Sdn Bhd & Anor v. The Government of Malaysia [2005] 7 CLJ 422 HC ***(refd)***

Dato' Abdul Ali DTNS & Ors v. Pengarah Kastam Negeri, Wilayah Persekutuan [1994] 1 LNS 39 HC ***(refd)***

Government of Malaysia v. Lim Kit Siang & Another Case [1988] 1 CLJ 219; [1988] 1 CLJ (Rep) 63 SC ***(refd)***

Legislation referred to:

Customs Act 1967, ss. 2, 14(1), 15, 114(1), 131, 138, 163A
Customs Duties (Exemption) Order 1988, Schedule Part I item 21A
Customs Duties (Exemption) Order 2013, s. 2(1), Schedule Part 1 item 13(iv)
Rules of Court 2012, O. 53 r. 2(4)

For the applicants - Wan Muhammad Amin Wan Yahya, JR Tey & Mohd Ali; M/s Amin Karlos
For the respondents - Mazlifah Ayob; SFC

Reported by Sandra Gabriel

JUDGMENT

Hanipah Farikullah J:

Introduction

[1] The applicants filed for a judicial review decision made by the respondents pursuant to O. 53 of the Rules of Court 2012 ("RC 2012").

[2] The reliefs claimed by the JR application are as follows:

(i) To quash the first respondent letter dated 24 March 2015 pertaining to imposition of customs duty/tax and offer of compound for offence under s. 138 of the Customs Act 1967;

(ii) To quash the first respondent letter dated 20 April 2015 pertaining to revocation offer of compound for offence under s. 138; and

(iii) To compel the first respondent to accept payment of compound to absolve the applicants from the offence committed under s. 138 of the Customs Act 1967; and thereafter release the vehicles.

[3] Between October 2013 and January 2015, officers of the respondents have seized and detained 34 vehicles as follows:

	Vehicle Registration Number (VRN)	**Registered Owner**	**Make/Model**
1	LB 87	Chin Jit Pyng	Rolls-Royce Ghost
2	LE 1137		Morgan Aero 8
3	GIM 1673	Chin Tzer Jinn	Porsche 911
4	L 191	Chin Tzer Minn	Lamborghini Aventador LP 700
5	GIM 323	Dato' Richard Fong Loong Tuck	Lamborghini Gallardo LP 570 Coupe
6	GIM 1585	Cherry Anne Tong Chun Ling	Ferrari 458 Italia
7	LE 66	Yee Kok Leong	Porsche Carrera 911S
8	LE 78	Soh Weng Thiam	Ferrari 458 Spider
9	LE 816	Ng Shaw Hwa	Ferrari 430 Scuderia
10	LE 328	Lee Kian Kah	Ferrari 458 Italia

	Vehicle Registration Number (VRN)	Registered Owner	Make/Model
11	GIM 8185	Toh Mei Ling	Ferrari 458 Spider
12	LE 911	Ng Poh Hwa	Porsche 911 Carrera S
13	LE 660		Ferrari California
14	GIM 233	Dato' Tee Lian Eng	Ferrari 430 Scuderia
15	GIM 603	Ng See Toh	Lamborghini Gallardo LP 550 Coupe
16	LE 190		Ferrari California
17	LE 1198	Poon Wai Keong	Porsche 911 Carrera S
18	LE 1929	Chan Lai Sim	Porsche 911 Carrera S
19	GIM 9128	Dato' Tan Su Cheng	Ferrari 458 Italia
20	GIM 5608	Lim Thiam Huat	Lamborghini Gallardo LP 570
21	GIM 375	Ng Tet Pee	Lamborghini Gallardo LP 570 Coupe
22	LD 6666	So Chung Yee	Lamborghini Gallardo Spyder MY 12
23	GIM 5502	Ong Seng Chieh	Lamborghini Gallardo LP 550 Coupe
24	GIM 7783	Dr Wong Jun Shyan	Lamborghini Gallardo LP 550 Coupe
25	GIM 5555	Revenue Team Sdn Bhd	Lamborghini Aventador
26	GIM 7104	Ida Suraya binti Mustapha	Lamborghini Aventador
27	GIM 1151	Tan Yu Yeh	Porsche Cayenne E2S
28	LE 377	Siah Leong Hoe	Ferrari Fiorano (A)
29	LE 16	Su Ah Ley	Bentley Continental Supersport

	Vehicle Registration Number (VRN)	Registered Owner	Make/Model
30	GIM 863	Chong Yoon Huat	Porsche Cayenne R2 Turbo
31	XIASEAN	Lee Chee Leong	Lamborghini Aventador LP700
32	GIM 366	Oz Auto Parts Sdn Bhd /Lim Chuen Soon	Ferrari 458 Italia
33	GIM 280	Dr Yap Chee Wai	Porsche Carrera S 911
34	GIM 258	Dato' Abd Gani bin Yusof	Ferrari 430 Scuderia

Decision

[4] These imported vehicles were purchased by the registered owners ('the concerned applicants') and brought into Malaysia through Langkawi, a duty free island. The applicants were granted duty/tax exemption by the Minister in accordance with s. 14(1) of the Customs Act 1967 read together with Customs Duties (Exemption) Order 1988/Customs Duties (Exemption Order) 2013 and Sales Tax (Exemption) Order 1980.

[5] The vehicles were imported to Malaysia and through Langkawi which entitles them to certain customs duties exemption. Pursuant to the Part 1 item 13 (iv) of the Schedule to the Customs Duties (Exemption) Order 2013, the vehicles can only remain in the "principal custom area" which means Malaysia exclusive of Labuan, Langkawi and Tioman pursuant to s. 163A of the Customs Act 1967 for a period not exceeding 30 days per trip; subject to a maximum period of 90 days in any one year.

[6] It is not a disputed fact that the vehicles were seized at numerous places within the principal customs area ('PCA').

[7] The respondents contended that the seizures were made pursuant to s. 114(1) of the Customs Act 1967 for contravening item 21A of Customs Duties (Exemption) Order 2013 or item 13 of Customs Duties (Exemption) Order 1988 namely for overstay in PCA more that the allowed statutory timespan.

[8] Except for the first, second and fifth applicants, the other concerned applicants were issued with bill of demand for payment of customs duty/tax together with offer of RM5,000 compound.

[9] *Via* a letter dated 3 March 2015, Tetuan Shafee & Co acting as a representative for the applicants, proposes to pay customs duty/tax at a lesser amount with compound. In response to the letter, the first respondent issued

a letter dated 24 March 2015, offering compound of RM1,000 for each car owner for the committed offence under s. 138 of the Customs Act together with payment of customs duty/tax as per appendix A. It is condition that the payment must be made within 14 days from the date of the letter (see exh. KA4 of encl. 1 for both of the letters).

[10] *Via* a letter dated 30 March 2015, Tetuan Shafee & Co forwarded 35 banker's cheques worth RM1,000 each for payment of compound (see exh. KA5 of encl. 1). Failing to simultaneously enclose payment of customs duty/tax, the first respondent returned the banker's cheques *via* a letter dated 20 April 2015 and withdraw the offer dated 24 March 2015.

[11] Dissatisfied with the withdrawal of compound offer, the applicants file this judicial review application imploring to quash the first respondent's letters.

[12] Learned counsel for the applicants submitted that the first respondent's letters dated 24 March 2015 and 20 April 2015 are tainted with illegality and irrationality.

[13] In gist, the applicants contended that since the respondents had imposed compound to the applicants pursuant to s. 138 of the Customs Act the respondents have no power to impose duty pursuant to that section.

[14] Section 138 of the Customs Act 1967 states as follows:

> Every omission or neglect to comply with, and every act done or attempted to be done contrary to, the provisions of this Act, or any breach of the conditions and restrictions subject to, or upon which, any license or permit is issued or any exemption is granted under this Act, shall be an offence against this Act and in respect of any such offence for which no penalty is expressly provided the offender shall be liable to a fine of not exceeding twenty thousand ringgit or to imprisonment for a term not exceeding five years or to both.

[15] On the contrary, learned Senior Federal Counsel for the respondents contended that the imposed tax decisions by the respondents are not amenable to judicial review. In support of the respondents' position, learned Senior Federal Counsel relied on O. 53 r. 2(4) RC 2012 which provides that only a 'person who is adversely affected by the decision, action or omission in relation to the exercise of the public duty or function is entitled to make an application for judicial review'.

[16] The applicants enjoy exemption of customs duties granted by the Minister under s. 14(1) of the Customs Act read together with Customs Duties (Exemption) Order 2013.

[17] Section 14(1) reads as follows:

> 14(1) The Minister may, by order, exempt, subject to such conditions as he may deem fit to impose, any class of goods or persons from the payment of the whole or any part of any customs duty or any other prescribed fee or charge which may be payable.

[18] In relation to this, s. 2(1) Exemption Order 2013 stipulates:

Exemption from payment of Customs Duty

2(1) Subject to paragraph 3, the persons specified in column (2) of part I of the Schedule are exempted from the payment of customs duty on the goods specified in Column (3) subject to conditions in column (4).

Schedule, Part I, Item No. 13

No	(2) Persons Exempted	(3) Goods Exempted	(4) Conditions	(5) Certificate to be signed by
13	The Driver/Rider	One motor vehicle of any description or one motorcycle registered in and transported from Labuan or Langkawi and subsequently returned to Labuan or Langkawi	(i) That the motor vehicle/motorcycle has been registered by the authority responsible for registering or licensing the motor vehicle/motorcycle; (ii) that the motor vehicle/motorcycle is registered by the proper officer of customs at Labuan or Langkawi at the time of transportation; (iii) that the motor vehicle/motorcycle may only be landed at a customs port in the principal customs area; (iv) that the motor vehicle/motorcycle may remain in the principal customs area for a period not exceeding 30 days per trip, subject to a maximum period of 90 days in any one year;	The Driver/ Rider

No	(2) Persons Exempted	(3) Goods Exempted	(4) Conditions	(5) Certificate to be signed by
			(v) that immediately on its return from the principal customs area, the motor vehicle/motorcycle shall be produced to the proper officer of customs at Labuan or Langkawi; (vi) that the security as determined by the Director General is furnished to customs for the return of the motor vehicle/motor cycle to Labuan or Langkawi	

[19] It is pertinent to note that it is the condition of the exemption that the vehicles must not remain in PCA:

i) For an aggregate of more than 90 days in a year (Exemption Order 1988);

ii) More than 30 days per trip, subject to a maximum period of 90 days in a year (Exemption Order 2013)

[20] The evidence clearly shows that the applicants have breached the condition by allowing the vehicles to stay in PCA more than 90 days/30 days after they had left Langkawi between year 2012-2013 (See exh. KA2 of encl. 12 and exh. KA1 of encl. 15 for borang-borang K1 which had recorded the respective vehicles outbound date from Langkawi. Copies of the forms were also handed to the owners before the vehicles were brought out).

[21] I agreed with the respondents' submission that upon breach of the condition prescribed under Exemption Order 1988/2013, s. 15 of the Customs Act 1967 re-imposes customs duty rendering the applicants or any person found in possession of the vehicles be jointly and severally liable to pay such customs duty. Section 15 reads:

Reimposition of duty

(1) If any goods, on which customs duty has not been paid by reason of an exemption granted under section 14, cease to comply with the conditions subject to which such exemption was granted or cease to be kept or used by the person or for the purposes qualifying them for such exemption, such goods shall, upon such cesser, become liable to the customs duty and the person to whom such exemption was granted and any person found in possession of such goods shall be jointly and severally liable to pay such customs duty.

[22] Hence, pursuant to s. 15 of the Customs Act, upon breach of the condition prescribed under the Exemption Order 2013, the vehicles become liable to the customs duty and the applicants or any person found in possession of the vehicles be jointly and severally liable to pay such customs duty.

[23] In *Calio Car Rentals & Tours Sdn Bhd v. Pengarah Kastam Dan Eksais Diraja Malaysia* [1997] 1 LNS 105; [1997] MLJU 116, the facts are as follows:

For purposes of interpretation it is trite law that where the words are precise and unambiguous then the literal and strict construction rule should apply (see *Chin Choy & Ors v. Collector of Stamp Duties* [1979] 1 MLJ 69 and *Sin Siew Hong & Ors v. Lim Gim Chian & Anor* [1995] 3 MLJ 141). This has always been the stance adopted by courts either for purposes of interpreting statutes or documents and I did not intend to detract from that beaten path. Perusing the conditions imposed, the message was clear in that if the applicant breached any of the substantive provisions the privileges pertaining excise duty would dissipate and thus required to pay up.

…

In a gist section 12 is a reimposition of duty which had been exempted conditionally by the Minister pursuant to section 11 of the same Act. The relevant Minister here is the Minister of Finance as under the Ministerial Functions Act 1969 (Act 2) the Customs Department comes under his portfolio. As an obiter, for purposes of reimposing custom duty which had been initially exempted by the relevant Minister, section 14(2) of Customs Act 1967 (Act 235) would be applicable. Why no customs duty was imposed as against the vehicles is beyond me, but certainly the non-imposition meant a loss of revenue to the Government of Malaysia.

On the above premises I decided that the acts of the Customs Department when imposing the excise duty did not contravene the law, and accordingly rejected the application with costs.

[24] When the vehicles overstayed in the principal customs area (PCA) for an aggregate of more than 90 days in a year and/or more than 30 days per trip, the vehicles have ceased to comply with a condition in the Exemption Order 1988/2013.

A See: Item No 21A, Part I, Schedule of P.U. (A) 410/1987 (Tab 2 RBA 2);

Item No. 13, Part I, Schedule of P.U. (B) 371/2013 (Tab 3 RBA 2).

[25] Upon cessation of compliance with the condition that was attached to
B the Exemption Orders, the applicants as the owner of the vehicles cum the person to whom the exemption was granted, in allowing the vehicles to cease to comply with the condition, are suspected to commit an offence under s. 138 of the Customs Act. Also, due to the breach of the Exemption Order, the vehicles become 'uncustomed goods'.

C Section 2 of the Customs Act 1967 defines uncustomed goods as goods in respect of which a breach of the provisions of this Act or of any subsidiary legislation made thereunder has been committed.

[26] In *Dato' Abdul Ali DTNS & Ors v. Pengarah Kastam Negeri, Wilayah Persekutuan* [1994] 1 LNS 39; [1994] MLJU 127, the case concerns with re-
D imposition of customs duty and sales tax upon breach of condition attached to the exemption. Siti Norma Yaakob J in dismissing the plaintiff's originating summons held:

> Since an opportunity has been afforded to the 2nd Plaintiff to use the car, I consider that the condition that the car be used exclusively by the 1st
E Plaintiff has been contravened and to that end, the defendant has been justified in cancelling the exemptions.
>
> In any event, section 15(1) of the Customs Act, 1967, under which the exemptions were cancelled, is wide in meaning and scope. It is worded as follows:
>
> F
> > If any goods, on which customs duty has not been paid by reason of an exemption granted under section 14, cease to comply with the conditions subject to which such exemption was granted or cease to be kept or used by the person or for the purposes qualifying them for such exemption, such goods shall, upon such
> G cesser, become liable to the customs duty and the person to whom such exemption was granted and any person found in possession of such goods shall be jointly and severally liable to pay such customs duty.
>
> The corresponding reimposition of sales tax is found in clause 11(b) of the Sales Tax Act, 1972, which provides the same effect as that contained in
> H section 15(1) of the Customs Act, 1967.
>
> On the particular facts of this case, I consider that the plaintiffs had failed to comply with one of the 3 conditions attached to the exemptions and on that finding, I had dismissed the plaintiffs' Originating Summons with costs.

I **[27]** The re-imposition of customs duty upon violation of the duty exemption is mandatory by virtue of law. Thus, it involves no administrative decision-making process by the first respondent or any officer of the respondents.

[28] In the case of *City Growth Sdn Bhd & Anor v. The Government of Malaysia* [2005] 7 CLJ 422; [2006] 1 MLJ 581, Raus Sharif J (now PCA) states that:

> It has been said before that not all decisions and action of a public officer is reviewable by the court. In *R v. Sloan* [1990] 1 NZLR 474, Justice Hardie Boys said:
>
> … It is not every decision made under statutory authority that is subject to judicial review. A decision must go beyond what is merely administrative or procedural … or the exercise of a function rather than a power … Quite plainly, the conclusions reached by the inspector here are of this kind and so are not reviewable. To hold otherwise would, as Mr Neave submitted, open up the investigation process of all law enforcement agencies to constant judicial review; and that cannot have been the intention of Parliament.
>
> …
>
> Likewise in this case, the order of the deputy public prosecutor under s. 50(1) of AMLA is also not reviewable. This must be so, otherwise if all decisions and action of public authority of this nature are amendable to court's review, then the government machinery may not be able to function smoothly. The investigation process of all law enforcement agencies will be open to constant judicial review. To borrow the words of Justice Hardie Boys in *R v. Sloan* 'that cannot have been the intention of Parliament.'

[29] Also in the case of *Ahmad Azam bin Mohd Salleh & Ors v. Jabatan Pembangunan Koperasi Malaysia & Ors* [2004] 4 MLJ 86 (HC) (Tab 14 RBA) Raus Sharif J held at p. 93, para 12:

> Thus, I am of the view that the content of the 6 December letter issued by the second respondent to the third respondent pursuant to s. 67 of the Act, is not reviewable under O. 53 of the Rules of High Court 1980. To me, the four officers from the department of the first respondent when conducting the inspection on the third respondent, on the direction of the second respondent, were merely exercising a function under the Act. To hold such process of inspection reviewable, would open up the investigation process of all enforcement agencies to constant judicial review. I have no valid reason to open the floodgate.

Matters Pertaining To Compound Of Criminal Offence Are Not Administrative Decision

[30] Consequent to the breach of the condition of the Exemption Order 1988/2013, the appellants have committed a criminal offence under s. 138 of the Customs Act 1967 (Tab 8 RAB), which reads as follows:

> 138. Penalty for offences not otherwise provided for.
>
> Every omission or neglect to comply with, and every act done or attempted to be done contrary to, the provisions of this Act, or any breach of the conditions and restrictions subject to, or upon which, any license

A or permit is issued or any exemption is granted under this Act, shall be an offence against this Act and in respect of any such offence for which no penalty is expressly provided the offender shall be liable to a fine of not exceeding **twenty thousand ringgit or to imprisonment for a term not exceeding five years or to both.

B **[31]** Learned Senior Federal Counsel has correctly stated that position of the law that matters pertaining to compound of criminal offences are not administrative decisions that are susceptible for judicial review. Under s. 131, the power to compound and the amount of compound are discretionary powers which are only exercisable by the appropriate officer of customs.

C

[32] Instead, matters pertaining to compound are part and parcel of enforcement of criminal law under the Customs Act, which is beyond the jurisdiction of civil courts.

[33] In the case of *Government of Malaysia v. Lim Kit Siang & Another Case* D [1988] 1 CLJ 219; [1988] 1 CLJ (Rep) 63; [1988] 2 MLJ 12 (Tab 16 RBA) where it was held that criminal law should not be enforced by means of civil proceedings for a declaration when the court's power to grant that remedy is only at the discretion of the court. At pp. 32 F-G Abdul Hamid CJ said as follows:

E

> With all due respect to the learned judge, my view is clear in that fundamentally where a criminal offence by prescribing a penalty for the breach of it but not providing a civil remedy – the general rule is that no private individual can bring an action to enforce the criminal law, either by way of an injunction or by a declaration or by damages.

F **Not Adversely Affected Person**

[34] It is not a disputed fact that the respondents have never seized cars belonging to the following applicants. The third, fourth, sixth, eighth, ninth, 14th, 23rd, 24th, 36th and 40th applicants.

G **[35]** O. 53 r. 2(4) RC 2012 provides that any person who is adversely affected by the decisions, action or omission in relation the above applicants are not persons adversely affected under O. 53 which stipulates that only a person that is adversely affected by decision, action or omission of a public authority in exercising its public duty, may apply for judicial review. Order 53 r. 2(4) specifies as follows:

H

> (4) Any person who is adversely affected by decision, action or omission in relation to the exercise of the public duty or function shall be entitled to make the application.

[36] Hence, the above, the persons are not person who is adversely affected I by the decision, action or omission in relation to the exercise of the public duty or function.

[37] The evidence also shows that the following applicants' cars have been released upon full payment of offered compound and payment of duty/tax:

	Name	VRN Number	Released Date
7th applicant	Dato' Richard Fong Loong Tuck	GIM 323	9.6.2015
19th applicant	Ng See Toh	GIM 603 LE 190	16.5.2015
26th applicant	Ng Tet Pee	GIM 375	25.5.2015
29th applicant	Dr Wong Jun Shyan	GIM 7783	14.6.2015
39th applicant	Dato' Abd Gani bin Yusof	GIM 258	20.10.2015

[38] *Mandamus* can be granted only when:

i. A legal duty is imposed on authority, and it does not perform it; and

ii. The applicant has a legal right to compel performance of that duty.

Conclusion

[39] In conclusion, upon breach of the exemption order granted to the applicants, the vehicles shall become liable to the customs duty and any person found in possession of such goods shall be jointly and severally liable to pay such customs duty.

[40] Consequently, the re-imposition customs duty was made mandatory by s. 15. The vehicles were legally seized under s. 114(1) for committing an offence under s. 138 and validly detained under s. 131 until customs duty payable is paid.

[41] Based on the above reasons, the applicants' application is dismissed with costs of RM30,000.